

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34028

IN THE INTEREST OF JANE DOE, A	)	
CHILD UNDER 18 YEARS OF AGE.	)	
STATE OF IDAHO,	)	2008 Unpublished Opinion No. 478
	)	
Plaintiff-Respondent,	)	Filed: May 23, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JANE DOE,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. John M. Melanson, District Judge; Hon. Larry R. Duff, Magistrate.

Order finding juvenile within purview of Juvenile Corrections Act, affirmed.

Dennis R. Byington, Mini-Cassia Public Defender, Douglas R. Whipple, Deputy Public Defender, Burley, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ralph R. Blount, Deputy Attorney General, Boise, for respondent.

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LANSING, Judge

Jane Doe, a juvenile, appeals the district court's intermediate appellate decision affirming the magistrate's finding that she came within the purview of the Juvenile Corrections Act for resisting and obstructing an officer. We affirm.

I.

FACTUAL & PROCEDURAL BACKGROUND

A uniformed police officer on patrol saw Doe's mother drive by in a vehicle. The officer recognized the mother and suspected that there was a warrant for her arrest. After confirming this fact, the officer followed the mother to her residence and informed her that he would be placing her under arrest pursuant to this warrant. The mother was babysitting two minor granddaughters, and so was permitted to call someone to watch the children. Sixteen-year-old

Doe, Doe's father, and another individual arrived at the residence a short time later. The father adamantly protested the arrest. As the officer attempted to take the mother into custody, the situation began to escalate. The mother struggled with the officer, dropped to the ground, and rolled around. The officer accidentally stepped on her hand, causing the mother and the grandchildren to scream. While the officer attempted to secure the mother, Doe approached. The officer instructed her to step back. She initially complied, but then approached again. The officer, who was holding the mother with one hand, reached out with the other and pushed on Doe's shoulder while again instructing her to back up. She did not do so, and so the officer sprayed her with pepper spray. These events happened in quick succession. Once the officer had secured the mother, he arrested Doe. The State filed a petition pursuant to the Juvenile Corrections Act (JCA), Idaho Code 20-505(2), charging Doe with resisting or obstructing an officer, I.C. § 18-705. An adjudicatory hearing was held before the magistrate court, which found that she fell within the purview of the JCA. Doe appealed to the district court, arguing that the evidence was insufficient to sustain this finding. The district court affirmed the magistrate's finding, and Doe again appeals.

## II. ANALYSIS

We directly review the district court's decision on intermediate appeal. *Losser v. Bradstreet*, \_\_\_ Idaho \_\_\_, \_\_\_ P.3d \_\_\_ (March 28, 2008). In doing so, we examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision. *Id.*; *Nicholls v. Blaser*, 102 Idaho 559, 633 P.2d 1137 (1981).

Doe contends that the evidence was insufficient to sustain a finding that she had resisted and obstructed an officer. Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Doe*, 144 Idaho 796, 798, 172 P.3d 551, 553 (Ct. App. 2007); *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct.

App. 1991). We will not substitute our view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Id.*; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

The statute on resisting and obstructing an officer, I.C. § 18-705, provides in part:

Every person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office . . . when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the county jail not exceeding one (1) year.

Doe contends that her behavior did not constitute willful obstruction because it was the automatic response of a teenager coming to the aid of her mother, and that she had no time to respond to the officer's instruction to step back because he immediately sprayed her with pepper spray. As defined by I.C. § 18-101(1), "[t]he word 'wilfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage." Under this definition, Doe's desire to help her mother does not undermine the willfulness of her actions, and indeed, tends to show that her intent was to interfere with the officer as he attempted to effectuate the arrest. The evidence shows that Doe deliberately approached the officer while he was struggling with Doe's mother. While she initially retreated in response to the officer's instruction, she re-approached and was close enough to the officer that he was able to reach out and push her. This second approach undermines her contention that events happened too quickly for her actions to have been willful. Even assuming that she did not have time to obey the second command to back away, by re-approaching she had already obstructed the officer by disobeying the first command.

Doe also contends that as a matter of law she was not obstructing the officer because he was not lawfully discharging a duty of his office at the time of the encounter. One of the elements that must be proven to demonstrate a violation of I.C. § 18-705 is that the defendant knew at the time of the resistance that the officer was attempting to perform some official act or duty. *State v. Adams*, 138 Idaho 624, 629, 67 P.3d 103, 108 (Ct. App. 2003). An individual may not be convicted of obstruction for passively resisting or obstructing an unlawful act of a police officer. *State v. Wilkerson*, 114 Idaho 174, 180, 755 P.2d 471, 477 (Ct. App. 1988). Doe

contends that the act that she was obstructing--that is, the arrest of her mother--was unlawful because the officer did not inform the mother of the charges listed on the arrest warrant as required by Idaho Criminal Rule 4(h)(3).<sup>1</sup> We will not address this issue, however, because it has not been preserved. This defense theory was not presented to the trial court nor to the district court on intermediate appeal. As attempted evidentiary support for this argument, Doe has attached to her appellant's brief the transcript of her mother's trial. This transcript was not placed in evidence at Doe's own evidentiary hearing, however; indeed, her mother's trial did not even occur until about half a year after Doe's adjudicatory hearing. Because the transcript attached to Doe's appellant's brief is not part of the record from her juvenile proceeding, the State's motion to strike it from Doe's brief was granted.<sup>2</sup> It is well established that an appellant may not raise issues before this Court that were not raised and preserved at trial, *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992); *State v. Jones*, 141 Idaho 673, 676, 115 P.3d 764, 767 (Ct. App. 2005), or that were not raised before the district court in its capacity as an intermediate appellate court. *State v. Bailey*, 117 Idaho 941, 943, 792 P.2d 966, 968 (Ct. App. 1990).

### III. CONCLUSION

The evidence in this case is sufficient to find that Doe came within the purview of the JCA for resisting and obstructing an officer. The decision of the district court affirming the magistrate's finding is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**

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<sup>1</sup> This rule provides in pertinent part that "[i]f the officer does not have the warrant in possession at the time of arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued." I.C.R. 4(h)(3).

<sup>2</sup> Doe's brief also otherwise fails to comply with the appellate rules in that it contains no citations to the record as required by I.A.R. 35(a)(6) except with respect to one direct quote from the hearing transcript.